

REMARKS UNDER 37 C.F.R. 1.111

Reconsideration and allowance are respectfully requested. Claim 5, which was combined with claim 1 in the last Response, has been cancelled herewith.

The last Response timely filed by the Applicant simply placed this case in condition for allowance by rewriting allowable claims in independent form and rewriting the claims reversed by the Board of Patent Appeals in allowable form. Applicant's amendment did not raise any new issues, did not re-open prosecution and did not go beyond the scope of 37 C.F.R. § 1.198 and MPEP § 1214.07.

The Examiner's action in reopening prosecution is in error.

See 37 C.F.R. § 1.198:

Cases which have been decided by the Board of Patent Appeals and Interferences will not be reopened or reconsidered by the primary examiner except under the provisions of § 1.114 or § 1.196 without the written authority of the commissioner, and then only for the consideration of matters not already adjudicated, sufficient cause being shown. (emphasis supplied)

The Examiner's action of arbitrarily re-opening prosecution, without sufficient cause being shown, defies the mandate of the code.

See also MPEP § 1214.07 which states that only new claims that do not conform with the Board decision should be filed with an RCE (which would have re-opened prosecution). However, Applicant simply placed the allowable claims in condition for allowance and cancelled the appealed claims. The Examiner has in essence arbitrarily and capriciously taken the Application back

to 1997 (original Filing) on the same grounds and issues "already adjudicated" and decided by the Board.

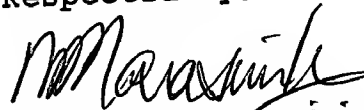
MPEP § 1214.07 further expressly provides:

"If the amendment obviously places an application in condition for allowance, ... the primary examiner should recommend that the amendment be admitted, ... and the amendment will be entered. ...

In the event that claims stand allowed in the application ... the application should pass to issue." (emphasis supplied).

Applicant respectfully requests the Examiner to review the statute and the code and to respectfully allow this case to issue.

Respectfully,



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VERSION WITH MARKINGS TO SHOW CHANGES MADE

In the Claims:

Kindly cancel claim 5 without prejudice.